

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ARVIK PLATINUM, INC., a New York  
corporation,

Plaintiff,

vs.

DM & ASSOCIATES, INC, a Nevada  
corporation; VSA, LLC, a Nevada limited  
liability company; MIKHAEL GISSIN,  
individually, and SVETLANA RYBINA,  
individually,

Defendants.

Case No.: 2:11-cv-01240-GMN-CWH

**ORDER**

Pending before the Court is the Motion to Strike Defendant's Answer to the Complaint and Defendant's Counterclaim. (ECF No. 33) filed by Plaintiff ARVIK Platinum, Inc. ("Plaintiff"). Defendant DM & Associates, Inc. ("DM") and Defendant VSA, LLC ("VSA") (collectively, "Corporate Defendants") failed to file a Response.

**I. BACKGROUND**

On March 30, 2012, Magistrate Judge Hoffman granted the Corporate Defendant's Motion to Withdraw as Attorney Hutchison & Steffen, LLC. (ECF No. 28.) Thereafter, on April 11, 2012, Judge Hoffman ordered the Corporate Defendants to retain counsel or risk having their Answer and Counterclaim (ECF No. 15) stricken. (ECF Nos. 31, 32.) The Corporate Defendants still failed to retain counsel. (ECF No. 32.) For this reason, on April 25, 2012, Judge Hoffman advised Plaintiff's counsel to file a Motion to Strike the Corporate **Defendants' Answers and counterclaim and a Motion for Default within two weeks.** (ECF No. 32.) Accordingly, Plaintiff filed the instant motion on May 8, 2012. (ECF No. 33.)

1 As of the date of this Order, the Corporate Defendants remain unrepresented by counsel.

2 **II. DISCUSSION**

3 **A. Corporate Defendants' Failed to File Points and Authorities as Required by**  
4 **Local Rule 7-2(d).**

5 The Court first notes that the Corporate Defendants' Response to Plaintiff's Motion was  
6 due by May 25, 2012. (ECF No. 33.) As of the date of this Order, nearly five months later, the  
7 Corporate Defendants have not filed a Response to Plaintiff's Motion. Pursuant to Local Rule 7-  
8 2(d), "[t]he failure of an opposing party to file points and authorities in response to any motion  
9 shall constitute a consent to the granting of the motion." For this reason alone, Plaintiff's Motion  
10 to Strike should be granted.

11 **B. Corporate Defendants' Failure to Retain Counsel Warrants an Entry of**  
12 **Default**


13 Even without consideration of Local Rule 7-2(d), the Court GRANTS Plaintiff's Motion  
14 to Strike and for Default. Specifically, it is well-established that corporations and  
15 unincorporated associations "may appear in the federal courts only through licensed counsel."  
16 Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 201-02 (1993);  
17 In re Am. W. Airlines, 40 F.3d 1058, 1059 (9th Cir. 1994) (stating that "[c]orporations and other  
18 unincorporated associations must appear in court through an attorney"). Furthermore, the Ninth  
19 Circuit has expressly recognized that default may be entered against an artificial entity for failing  
20 to retain counsel. United States v. High Country Broad. Co., 3 F.3d 1244, 1245 (9th Cir. 1993).

21 **C. Pursuant to Rule 41(c) of the Federal Rules of Civil Procedure, DM's**  
22 **Counterclaim is Dismissed for Failure to Comply with a Court Order.**

23 Moreover, dismissal of Defendant DM's counterclaim is also appropriate because the  
24 Corporate Defendants failed to comply with the Court's Order to retain counsel. See Fed. R. Civ.  
25 P. 41(b) (stating that a plaintiff's failure to comply with a court order warrants involuntary  
26 dismissal); Fed. R. Civ. P. 41(c) (providing that this rule also applies to counterclaims). Because  
27 DM failed to comply with the Order requiring that they retain counsel, the Corporate  
28 Defendant's counterclaim is dismissed.

**IT IS HEREBY ORDERED** that Plaintiff's Motion Striking the Answer and Counterclaim filed by Defendant DM & Associates, Inc. and VSA, LLC (ECF NO. 33) is granted.

DATED this 3<sup>rd</sup> day of December, 2012.

  
M. Navarro  
States District Judge